IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7036 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANABHAI R GUJARAT

Versus

GRAM PANCHAYAT

Appearance:

1. Special Civil Application No. 7036 of 1987

MR MUKESH H RATHOD for Petitioner No. 1

MR HRIDAY BUCH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. By filing this petition under Article 227 of the Constitution of India the petitioner has challenged the judgment and award made by the Judge, Labour Court, Rajkot dated 11th May, 1987 in Reference (LCR) No. 53/1984, whereby against the prayer of the petitioner for

reinstatement with back wages, he has been granted compensation of Rs.500/- and Rs.200/- towards the costs of the litigation.

2. The facts of the case can be stated in short as under :-

At the relevant time the petitioner was working as Octroi Clerk with the erstwhile Gram Panchayat of Daulatpara on daily wages. He worked on the post for one year and two months. He received a daily wage of Rs.13/-. It is an admitted fact that on account of the direction of this Court one Ravindra D. Vasavada was required to be reinstated by the respondent - Gram Panchayat as the Octroi Clerk and the petitioner being the junior most had to make way for him. He was discharged from the service with effect from 7th April, 1983. Despite his request, he was not taken back in the service by the respondent and, therefore, he raised a dispute which was referred to the Assistant Labour Commissioner, Porbandar for conciliation, but since the efforts failed, the Assistant Labour Commissioner referred the dispute to the Labour Court for adjudication.

2.1. Before the Labour Court it was contended by the petitioner that his service was wrongly terminated by the respondent and that he was not paid any notice pay or the retrenchment compensation before terminating his service as required under section 25-F of the I.D. Act. He, therefore, claimed that the impugned order was bad in law and he was required to be reinstated on his original post together with continuity of service and all incidental benefits.

2.2. The said claim was challenged by the respondent by filing written statement at Exh. 5. In the said statement it was averred that it was only because of the order of reinstatement passed in favour of one Ravindra D. Vasavada by this Court, the petitioner was discharged from service being the junior most to accommodate Mr. Vasavada. It was further contended that the termination was not retrenchment and the requirements of provisions of section 25-F are not required to be complied with. It was further averred that subsequently upon there being a vacancy in the water supply scheme, the petitioner was offered job by the respondent, but he refused to accept it and instead he started his flour mill. It was further contended by the respondent that in such circumstances, there was no question of reinstatement.

3. In the course of the hearing the parties have led evidence, oral as well as documentary. The petitioner examined himself at Exh. 10; whereas the respondent examined its Sarpanch - Ramjibhai Shamjibhai at Exh. 15. At the end of the proceedings the Labour Court came to the conclusion that in the facts and circumstances of the case, no direction for reinstatement of the petitioner on his original post would be given but instead payment of compensation of Rs.500/- would meet the ends of justice. It is this decision which is now under challenge before this Court.

4. Having gone through the record of this petition and in particular the judgment of the Labour Court, it clearly transpires that the petitioner worked as Octroi Clerk with the respondent for a period of one year and two months on a daily wage of Rs.13/- i.e. at the monthly wage of Rs.380/-. It is also clear that because of the direction of this Court to reinstate one Ravindra Vasavada, the petitioner had to be discharged from the service being the junior most. It may be noted here that even after the petitioner was discharged from the service, adequate opportunities were given to him by the respondent to join its employment but it was the petitioner who had refused the same. In such events, no fault can be found with the respondent. It is also very clear that the respondent had to discharge the petitioner from service for the reasons beyond its control. The view therefore, taken by the Labour Court that it cannot be termed as retrenchment under the provisions of section 2 (oo) of the I.D. Act and there is no necessity of following the conditions laid down in section 25-F of the I.D. Act before bringing end to the service of the petitioner, is not erroneous. The Labour Court has also taken into consideration two factors, namely that the petitioner was given opportunity to come back in the service by the respondent, but he had not seized the same and further that the case of the petitioner that his juniors were retained when his service was terminated, was not true. It, therefore, thought it fit to award compensation in lieu of the reinstatement.

4.1. It may be noted here that while deciding the amount of compensation the Labour Court has not assigned any reasons why the said amount was considered adequate by it. It is true that the amount of Rs.500/- was awarded in the year 1987 and considering the value of money of that time, it was not a meagre amount. However, the Labour Court has totally overlooked one fact that the petitioner all of a sudden had to go out of the service without there being any fault on his part. When he is

faced with such difficult situation, the compensation of Rs.500/- would not be a matter of adequate solace to him nor it would enable him to utilize the said amount to setup another source of income. It is, therefore, just and proper to increase this amount keeping in view the fact that the compensation is required to be awarded in light of the events that have taken place in the year 1987. However, in my opinion the just compensation would be Rs.5,000/= i.e. the salary of atleast one year.

5. In the aforesaid circumstances, the award of the Labour Court is required to be slightly modified. The respondent, in place of Rs.500/-, would be required to pay compensation of Rs.5,000/- [Rupees five thousand only] to the petitioner together with the costs as per the direction of the Labour Court. The payment of Rs.5,000/= to be made within two months from the date of the judgment. This petition is, therefore, partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.